

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed June 22, 2004 ("Office Action"). In the Office Action, Claims 1-11 are pending in the Application and the Examiner rejects Claims 1-11. Applicant has amended Claims 1, 3, 4, 6, 7, 8, and 11. Applicant submits that no new matter has been added with these amendments. As described below, Applicant believes all claims to be allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and full allowance of all pending claims.

Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication that Claims 2 and 3 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. However, as discussed below, Applicant believes that independent Claim 1 (from which Claims 2 and 3 depend) is also allowable. Therefore, Applicant has not amended Claims 2 and 3.

Section 112 Rejections

The Examiner rejects Claims 1-11 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claims 1, 3, 4, 6, 7, 8, and 11 to correct the antecedent basis and indefiniteness issues identified by the Examiner. Accordingly, Applicant respectfully submits that Claims 1-11 are in accordance with 35 U.S.C. § 112, second paragraph. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 1-11.

Section 102 Rejections

The Examiner rejects Claims 1, 4-5, and 7-11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,185,796 issued to Wilson ("*Wilson*"). For the following reasons, Applicant respectfully requests reconsideration and allowance of Claims 1, 4-5, and 7-11.

Independent Claim 1, as amended, recites:

A method of communicating voice transmissions to a receiving device from a transmitting device, comprising:

receiving a user input through a user interface associated with the transmitting device;

using an encryption key value to select an initial encryption algorithm from an encryption selection table, the encryption selection table stored at the transmitting device, the encryption key value calculated as a function of at least one or both of a periodic key value and a public variable key value, the user input comprising at least one of the encryption key value, the periodic key value, or the public key value;

encrypting the initial voice transmissions from the transmitting device using the initial encryption algorithm, the transmitting device capable of encrypting voice transmissions using a plurality of encryption methods; and

transmitting the encrypted initial voice transmissions from the transmitting device.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131 (*emphasis added*). Whether considered alone or in combination with any other cited references, *Wilson* does not disclose, either expressly or inherently, each and every element of the claims.

For example, Applicant respectfully submits that *Wilson* does not disclose, teach, or suggest "receiving a user input through a user interface associated with the transmitting device," as recited in amended Claim 1. With regard to similar language recited in Applicant's independent Claim 7, the Examiner points to host computer (102) as being analogous to the Applicant's "user interface." Specifically, the Examiner states that the user interface "is inherent since a computer is to have an interface (such as a keyboard, a

monitor, a mouse) so as to enable a user to interface with it.” Applicant respectfully disagrees.

“To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” M.P.E.P. § 2112; *See In re Robertson*, 49 U.S.P.Q.2d 1949, 1150-51 (Fed. Cir. 1999). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” M.P.E.P. § 2112; *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). In the present case, the Examiner has not provided such a basis in fact and/or technical reasoning to reasonably support the Examiner’s determination that the user interface necessarily flows from the inclusion of computer (102) in the radio transmitter disclosed in *Wilson*. In many applications, a computing device need not have a user interface, and the Examiner has not provided an indication of why such a user interface would be appropriate in the radio transmitter discussed in *Wilson*.

With regard to host computer (102), *Wilson* merely discloses that “both the DSP (104) and the RF unit (105) are controlled, at least in part, by a host computer (102) (such as a HC11 as manufactured and sold by Motorola, Inc.).” (Column 2, lines 54-56). “This control includes encryption algorithm and key selection.” (Column 2, lines 57-58). Thus, *Wilson* indicates that host computer (102) merely controls the selection and application of an encryption algorithm - tasks which do not necessarily require “receiving a user input through a user interface associated with the transmitting device,” as recited in Applicant’s Claim 1. In fact, the Motorola launched website www.freescale.com/webapp/sps-/site/prod_summary.jsp?code=68HC11D0&nodeId=01624684498635 describes the HC11 as a ROM-based high-performance microcontroller (MCU). Another Motorola website, (<http://www.motorola.com/content/0,,1596,00.html>) states:

Unlike a microprocessor, which is part of your PC's overall computing system, an MCU is a self-contained computer, holding a central processing unit, RAM (random access memory), and input and output devices all on one chip. Typically embedded inside some other device, MCUs are dedicated to a single task. Developers program these inexpensive chips to perform thousands and thousands of repetitions of the same job, with all of the instructions stored in memory.

Accordingly, the example host computer (102) disclosed in *Wilson* is merely a computer chip for performing the limited tasks of selecting and applying an encryption algorithm. For at least these reasons, *Wilson* does not disclose, teach, or suggest “receiving a user input through a user interface associated with the transmitting device,” as recited in amended Claim 1.

As a further example, Applicant respectfully submits that *Wilson* does not disclose, teach, or suggest “the user input comprising at least one of the encryption key value, the periodic key value, or the public key value,” as recited in amended Claim 1. As discussed above, *Wilson* does not disclose, teach, or suggest “receiving a user input.” Accordingly, it necessarily follows, that *Wilson* also does not disclose, teach, or suggest the features recited above.

As still another example of the deficiencies of the *Wilson* reference, Applicant respectfully submits that *Wilson* does not disclose, teach, or suggest “using an encryption key value to select an initial encryption algorithm from an encryption selection table, . . . the encryption key value calculated as a function of at least one or both of a periodic key value and a public variable key value,” as recited in Applicant’s Claim 1. To the contrary, *Wilson* discloses that the “DSP (104) is programmed as desired to effectuate a particular voice encoding methodology, such as CELP or VSELP.” (Column 2, lines 31-33). Specifically, “an input value for the encryption process is initially derived from a specially stored vector called the initialization vector (IV) (406).” (Column 4, lines 32-34; Figure 4). “During subsequent processing, the input (405) is derived from the output value via a feedback path from the output (403) (hence the name, output feedback mode).” (Column 4, lines 35-37). Thus, an initialization vector is used to generate an input, which changes during the encryption process as a function of the feedback path from output (403). “The

encryption process itself (404) utilizes both an encryption algorithm and an encryption key to process the input (405) and yield the output (403), the latter then being available for combination with the plain test information. (Column 4, lines 38-42; Figure 4). A memory (108) “stores both the encryption algorithms (407) and key variables (408).” (Column 4, lines 42-45). Thus, the selection of the encryption algorithm is merely based upon the encryption keys stored in the memory, and the encryption process disclosed in *Wilson* does not disclose, teach, or suggest “the encryption key value calculated as a function of at least one or both of a periodic key value and a public variable key value,” as recited in Applicant’s Claim 1.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Applicant’s Claim 1, together with Claims 2-6.

Regarding independent Claim 7, Applicant also submits that *Wilson* does not disclose, teach, or suggest each and every limitation in Applicant’s claim. As one example, Claim 7 recites “a central processing unit operable to receive a user input through a user interface.” Applicant has shown above, however, that the host computer (102) disclosed in *Wilson* does not include a user interface as recited in Applicant’s claims. Accordingly, for reasons similar to those discussed above, Applicant also submits that the host computer (102) disclosed in *Wilson* is not the equivalent of Applicant’s claimed “central processing unit.” For at least these reasons, *Wilson* cannot be said to disclose, teach, or suggest “a central processing unit operable to receive a user input through a user interface,” as recited in Applicant’s Claim 7.

As a further example, Applicant submits that *Wilson* does not disclose, teach, or suggest “a device operable to . . . transmit the encrypted voice communications through a public switched telephone network,” as recited in Applicant’s Claim 7. To the contrary, *Wilson* is limited to “radio communications systems.” (Column 1, lines 7-9). *Wilson* states that “[i]n many such systems, the communication channel (wherein the “channel” may be a dedicated frequency, a frequency or frequency pair allocated pursuant to a frequency division multiplexing scheme, one or more assigned time slots in a time division multiplexed system, a code division multiplexed channel, or other radio frequency communication path) supports transmission and reception of an encrypted signal.”

(Column 1, lines 11-20). Accordingly, the radio transmitter (100) includes “an appropriate radio frequency (RF) unit (105), which uses the packet information to modulate an appropriate carrier signal, which carrier signal (107) is then radiated from an appropriate radiating element (106), all as well understood in the art.” (Column 1, lines 49-53). Because the radio transmitter (100) disclosed in *Wilson* is limited to a radio communication system for transmitting voice communications on frequency channel, *Wilson* does not disclose, teach, or suggest “a device operable to . . . transmit the encrypted voice communications through a public switched telephone network,” as recited in Applicant’s Claim 7.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Applicant’s Claim 7, together with Claims 8-11.

Section 103 Rejections

The Examiner rejects Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over *Wilson*. For the following reasons, Applicant respectfully requests reconsideration and allowance of Claim 6.

First, Claim 6 depends indirectly from Claim 1, which Applicant has shown above to be allowable. Accordingly, dependent Claim 6 is allowable over the *Wilson* reference at least because of this dependency.

Second, Applicant respectfully submits that dependent Claim 6 recites features that are not disclosed, taught, or suggested by *Wilson*. Specifically, Claim 6 discloses that “the warning switch signal comprises a predetermined and audible tone detectable by the receiving device, the tone indicating to the receiving device that the subsequent voice transmissions are encrypted according to the next encryption method.” In rejecting the claim, the Examiner “equates the claimed tone with the Logic ID being sent from *Wilson*’s transmitting device 100 to his receiving device 200.” (Office Action, page 9). *Wilson* discloses, however, that “[a]t the beginning of each message, a data preamble precedes transmission of a plurality of session data units.” (Column 3, lines 14-15). The data preamble includes 16 bits of key ID information. (Column 3, lines 20-22). Although *Wilson* discloses that “[i]f, of course, the algorithm and key are changed during

transmission, then the key ID will be altered to reflect the new logical ID,” it is the 16 bits of data in the preamble that are changed in the subsequent transmissions to reflect the new logical ID. Accordingly, *Wilson* does not disclose, teach, or suggest that “the warning switch signal comprises a predetermined and audible tone detectable by the receiving device, the tone indicating to the receiving device that the subsequent voice transmissions are encrypted according to the next encryption method,” as recited by Claim 6.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 6.

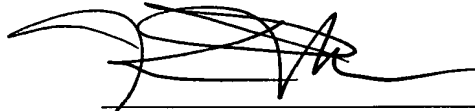
CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Kevin J. Meek, Attorney for Applicant, at the Examiner's convenience at (214) 953-6680.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant

A handwritten signature in black ink, appearing to be 'Kevin J. Meek', written over a horizontal line.

Kevin J. Meek
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Date: September 22, 2004

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